IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	CASE NO. BK11-40529-TJM
	)	
DANIEL L. KOCH,	)	CH. 13
	)	
Debtor(s).	)	

ORDER

Hearing was held in Lincoln, Nebraska, on January 4, 2012, regarding Fil. #57, Amended Motion for Relief from Co-Debtor Stay, filed by Wells Fargo Home Mortgage as Servicer for Wells Fargo Bank, National Association; Fil. #59, Objection to Amended Motion for Relief from Stay and Amended Motion for Relief from Co-Debtor Stay, filed by Daniel L. Koch; Fil. #82, Objection to Claim of Wells Fargo Bank, N.A., filed by Daniel L. Koch; and Fil. #86, Response, filed by Wells Fargo Home Mortgage as Servicer for Wells Fargo Bank, National Association. James Bocott appeared for the debtor and Jeffrey Spector appeared for Wells Fargo Home Mortgage, and Jennifer Andrews appeared as attorney of record for Wells Fargo Home Mortgage in the adversary proceeding.

Wells Fargo Home Mortgage, as servicer for Wells Fargo Bank, claims it or Wells Fargo Bank is the holder of a promissory note executed by the debtor and made payable to The Money Store in 1997. As such, it has filed a motion for relief from the automatic stay because the debtor admittedly has made no payments on the note.

The debtor has objected to the motion for relief on the basis that Wells Fargo cannot prove it is the holder of the note, or that it is currently enforceable, or that Wells Fargo has any right to foreclose the deed of trust which is security for the note.

The debtor has objected to the claim of Wells Fargo for similar reasons. In addition, the debtor has filed an adversary proceeding (A11-4058) dealing with some of the same issues.

At the recent hearing on the motion for relief from stay and the objection to claim, a copy of the promissory note endorsed in blank by a person purporting to be an authorized representative of The Money Store was admitted into evidence. Counsel for the debtor asserts that the copy is insufficient to support Wells Fargo’s position that it is a legitimate holder and gave value for rights in the promissory note. Counsel for Wells Fargo suggested that if that is indeed an issue, he would attempt to obtain the original promissory note and provide affidavit evidence concerning the legitimacy of Wells Fargo’s claim to be the holder for value.

The motion for relief and the objection to claim are deferred. There is, on the record as it now stands, insufficient evidence that Wells Fargo is actually the holder of the original note which was endorsed in blank. Wells Fargo must provide affidavit evidence that it is the holder of the original note and gave value to obtain that status. An affidavit of the attorney for Wells Fargo that he obtained the original note from Wells Fargo and he holds the original as part of the contested matters in this bankruptcy case and as part of the adversary proceeding is sufficient to show Wells Fargo has possession. However, an official of Wells Fargo must provide affidavit evidence that it gave value to become the holder.

If and when the affidavits are submitted, the motion for relief and the objection to relief, plus the motion to dismiss the adversary proceeding, will be ruled upon.

If the affidavits are not submitted by March 1, 2012, a status report should be filed by that date.

DATED: January 10, 2012

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:
*James Bocott
*Jeffrey Spector
Jennifer Andrews
Kathleen Laughlin
U.S. Trustee

* Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.